

EXHIBIT "H" (4 of 4)

1 DONNY A. SINKOV

2 that before today?

3 A. I believe I have.

4 Q. Do you recall whether you reviewed it before
5 it was filed with the court?

6 A. Yes.

7 Q. If you could turn to page 4 where it starts
8 under the heading of Facts, paragraph 12, it refers to
9 another inmate, Norberto Rivera. Do you see that?

10 A. Yes, I do.

11 Q. It continues through paragraphs 13 and 14. Do
12 you know where that information was gotten from?

13 A. Yes, I do.

14 Q. Where was that?

15 A. I obtained it.

16 Q. From where?

17 A. I FOIA'd the New York State Department of
18 Corrections.

19 Q. And you received documents back from them?

20 A. I did.

21 Q. So those allegations in those paragraphs are
22 information that you got from documents from the
23 Department of Corrections; is that correct?

24 A. That is correct.

25 Q. Then, when we continue on page 6 starting on

1 DONNY A. SINKOV

2 paragraph 17, with respect to those allegations, 17
3 through 21 for now, where did you get that information
4 from?

5 A. It was either part of the Department of
6 Corrections FOIA request that I received or information
7 that I received from my attorney.

8 Q. With respect to the allegations in paragraph
9 21, can you just read that paragraph?

10 A. On page 7?

11 Q. Page 7, yes.

12 A. (Witness complies). Okay.

13 Q. Where did you get that information from? The
14 same place?

15 A. That was -- yes, same place.

16 Q. Paragraph 22, there's allegations about County
17 policies and procedures. Where did you get the
18 information about the County policies and procedures?

19 A. From my attorney.

20 Q. Is that the same for paragraph 23 also?

21 A. From -- some are in part from the documents I
22 received from the New York State Department of
23 Corrections and some are in part from information
24 provided to me from my attorney.

25 Q. Did all of your information come to you either

1 DONNY A. SINKOV

2 from the report from the Department of Corrections or
3 from your attorneys?

4 A. No.

5 Q. Where else did you obtain information from
6 about this?

7 A. About all the charges together?

8 Q. Yes.

9 A. I asked a better question.

10 Q. Yes, you did. We'll use that one, then.

11 A. What I did was, you know, once we wrote the
12 Complaint, I took the individual names and Americor and
13 started doing some investigating on my own as to who
14 these people were that were involved in Spencer's death
15 and whether or not they had, to the extent I was able to
16 obtain the information, histories of violence, whether
17 or not they had anything in their background to show a
18 proclivity to this kind of behavior, whether or not
19 they've been disciplined as employees, whether or not,
20 if licensed by the New York State Department of
21 Education, charges had been brought against them, if
22 they were a medical care provider operating in New York
23 State, who they were and what they did, and as much
24 information I was able to obtain about the defendants in
25 the case as possible.

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2 Q. When you're talking about "defendants," are
3 you talking about the Americor defendants, or were you
4 able to obtain information about the other defendants,
5 Smith, Vasaturo, and Lapolla?

6 A. I was not able to obtain any information about
7 Vasaturo and Lapolla. Sheriff Smith's information, I've
8 read lots of things on it on the Internet, and I was
9 also present at the Republican Committee nominating
10 meeting when Sheriff Smith was nominated for Putnam
11 County Sheriff.

12 Q. Paragraph 25 of your Complaint on page 8, the
13 second sentence indicates, quote, "Spencer was overheard
14 by correctional staff stating that he was withdrawing
15 from heroin," end quote. How do you know that?

16 A. From the statements that they gave.

17 Q. That who gave?

18 A. That the corrections officers gave. I read
19 their statements.

20 Q. From the documents you received from the
21 Department of Corrections?

22 A. And/or through my attorneys.

23 Q. At paragraph 27, at the bottom of page 8, the
24 second sentence starts, quote, "Although he has supposed
25 to be personally observed at 15-minute intervals during

1 DONNY A. SINKOV

2 that period of time, upon information and belief and in
3 accordance with the County and Smith's practice then in
4 place during weekend shifts, some, if not all, of the
5 required 15-minute checks were never performed," end
6 quote.

7 What is your basis for that allegation?

8 A. From information from the Rivera case in 2003
9 and from statements made by the corrections officers and
10 information and documents that I've obtained through my
11 attorneys.

12 Q. And those documents indicate somewhere that
13 while Spencer was at the facility not all of the
14 required 15-minute checks were performed?

15 A. Yes.

16 Q. Do you recall specifically what documents
17 indicate that?

18 A. I think there were time logs of when the
19 checks were done.

20 MR. RANDAZZO: I would just request a
21 copy of any of those time logs that you have or that are
22 in your possession.

23 MS. BERG: I think you gave them to us.

24 MR. RANDAZZO: Showing that 15-minute
25 checks were not performed?

1 DONNY A. SINKOV

2 MS. BERG: Yes. You gave them to us.

3 BY MR. RANDAZZO:

4 Q. So you're relying upon something I gave you
5 already?

6 A. Right.

7 MS. BERG: And if it was part of the
8 State Commission information, then I produced it with
9 our 26 disclosure. I think it might have come from both
10 actually, you and them.

11 MR. RANDAZZO: Okay.

12 BY MR. RANDAZZO:

13 Q. Paragraph 29, the third line towards the end,
14 which is the middle of the sentence, continues, "Smith
15 deliberately and/or with reckless disregard for the
16 substantial risk of harm posed to high-risk detainees
17 failed to implement policies requiring," and then you
18 have a list there of A, B, and C.

19 How do you know what Smith's involvement was
20 in that regard?

21 A. Well, he was in charge of the facility as well
22 as other agencies within the Putnam County Sheriff's
23 Department. I believe that the jail was his area of
24 responsibility. As such, he is maybe the
25 highest-ranking individual that should or is supposed

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2 to, as part of his function as Putnam County Sheriff,
3 supervise individuals under his direct command or
4 individuals to which supervisors have been assigned that
5 he is supposed to monitor. So ultimately he is
6 responsible for the supervision of any inmate at the
7 Putnam County Correctional Facility.

8 Q. So the allegations as far as they concern
9 Smith are based upon the fact that he's the Sheriff and
10 oversees the facility; is that correct?

11 A. That's correct, yes.

12 Q. Then, when you talk about Smith's policy in
13 paragraphs 30, 31, 32, and 33, are those allegations
14 again based upon the fact that he's the Sheriff and in
15 your view he's ultimately responsible for these things
16 because he is the Sheriff?

17 A. Yes. That he is ultimately responsible for
18 setting policies, procedures, and protocols in place to
19 maintain the safety and operation -- to maintain the
20 safety of the prisoners while they're in the Putnam
21 County's custody and maintain order among the staff and
22 the -- provide proper supervision as Sheriff.

23 Q. Are you aware whether or not Spencer received
24 any medical or mental health treatment while he was in
25 the facility?

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2 A. Based on the information I obtained, Spencer
3 did not treat -- receive any medical treatment or
4 psychological treatment while he was in the facility.

5 Q. Do you know whether he was seen by any nurses
6 or doctors while he was in the facility?

7 A. Could you explain what "seen" means?

8 Q. Examined.

9 A. Like a medical examination?

10 Q. Yes.

11 A. So far the information that I've received
12 indicated that he was given no physical examination.

13 Q. At the time that you left the facility after
14 visiting with Spencer, did you believe that he was
15 intending to commit suicide that day?

16 A. No.

17 Q. At the time that you were at the correctional
18 facility and you saw Spencer on May 20th, did you ever
19 request that he should be given a paper gown or paper
20 clothing?

21 A. No, I did not.

22 MR. RANDAZZO: Can I just have a minute,
23 please. I'm trying to wrap things up.

24 MS. BERG: Sure.

25 (Brief recess.)

1 DONNY A. SINKOV

2 MR. RANDAZZO: I just have a couple of
3 follow-up questions.

4 BY MR. RANDAZZO:

5 Q. When Natalie came to you after Spencer was
6 arrested, I believe you indicated you told her he had
7 just gone away. Is there some reason you didn't tell
8 her that he had been arrested?

9 A. I thought Spencer should -- that Natalie
10 shouldn't contact Spencer and that it would be better if
11 he just spent some time away from her and that, you
12 know, I thought Spencer was in a safe place. And those
13 were the words I used, that he was in a safe place and
14 she didn't have to worry about him, because she was.
15 And I just wanted to assure her that he was in a place
16 where, you know, he was safe and he would be taken care
17 of. You know, "He'll be away for a little while," just
18 so she wouldn't go crazy trying to contact him and
19 become even more upset. And that's why I said what I
20 said.

21 Q. Why did you think it would be better if she
22 didn't contact him?

23 A. I think Spencer wanted to break up with her
24 and I think he was trying to and --

25 Q. And what led you to believe that Spencer

1 DONNY A. SINKOV

2 wanted to break up with her?

3 A. He told me so.

4 Q. Did you ever pay Spencer any money for doing
5 the work for you, whether at your house or at your other
6 building; an allowance or any monetary sum?

7 A. I gave him money to go to school and money for
8 lunches, and that was it. From time to time, you know,
9 on his birthday or something like that, we'd give him
10 some money for a present of some sort.

11 Q. Did he ever have to pay any rent to stay at
12 the house? Was he paying anything?

13 A. No, he was not.

14 MR. RANDAZZO: Thank you. I have no
15 further questions.

16 MS. MARGOLIS: I just have a few
17 follow-ups.

18 EXAMINATION BY MS. MARGOLIS:

19 Q. Good afternoon. My name, for the record, is
20 Bernice Margolis. I'm with the firm of Wilson, Elser,
21 Moskowitz, Edelman & Dicker, and I represent Americor
22 with respect to the lawsuit that you commenced. I've
23 got a couple of follow-up questions to those asked to
24 you by Mr. Randazzo. The same ground rules apply, the
25 instructions that he gave you earlier. Okay?

1 DONNY A. SINKOV

2 A. Yes.

3 Q. I apologize in advance if my questions seem a
4 little -- what's the word I'm looking for -- sometimes
5 when you do the follow up, you ask questions about
6 random subjects, so there's probably not going to be any
7 rhyme or reason or flow, but there's just a couple of
8 follow-ups to what Mr. Randazzo asked you, and we'll try
9 to get through it. Okay?

10 A. Yes.

11 Q. Did Spencer ever call you after he was
12 arrested?

13 A. No, he had not.

14 Q. Did you discuss with him at the time of the
15 15-minute visitation?

16 A. Discuss what?

17 Q. The fact that he didn't call you.

18 A. No, we did not.

19 Q. Earlier when Mr. Randazzo was asking you some
20 questions about Spencer's weight loss that you had
21 noticed, aside from weight loss, did you ever notice any
22 behavioral changes within Spencer?

23 A. No.

24 Q. Aside from the use of heroin, were you ever
25 aware whether Spencer was using any other type of drugs,

1 DONNY A. SINKOV

2 such as marijuana, cocaine, excessive use of alcohol?

3 A. I was not.

4 Q. During that 15-minute visitation that you had
5 with Spencer at the jail, when he told you that he was
6 advised that he could get 25 years for dealing drugs,
7 what was the response?

8 MS. BERG: Objection to the form.

9 Q. If any.

10 A. Okay. You said "advised," but I said that
11 Spencer was told --

12 Q. Well, told, advised.

13 A. -- that he would be spending 25 years in jail.

14 Q. Right.

15 A. I told him that we would get him a lawyer and
16 he would be represented by a private lawyer.

17 Q. Did you ever discuss with Spencer or did he
18 ever tell you how he came about using heroin, how he
19 started using heroin?

20 A. He didn't know.

21 Q. Did you ever have any discussions with Spencer
22 as to why he used heroin?

23 A. Not why, no.

24 Q. Other than the fact that he used heroin and
25 other than the treatment options that you've already

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2 testified to today, did you and Spencer have any other
3 discussions with respect to his use of heroin?

4 A. None that I can recall.

5 Q. At the time of your 15-minute visitation with
6 Spencer, did you ever ask him whether he committed the
7 acts that he was being accused of?

8 A. No, I did not.

9 Q. Are you aware whether Spencer's use of heroin
10 interfered with his schooling?

11 A. I'm sure it did.

12 Q. Do you know in what manner?

13 A. I don't know for sure, but I would assume that
14 anybody that uses drugs would have trouble
15 concentrating.

16 Q. Did he ever have to leave school because of
17 his heroin use?

18 A. Yes.

19 Q. When did he leave school?

20 A. I don't remember the date.

21 Q. Do you remember approximately when?

22 A. No.

23 Q. Do you remember for how long a period of time
24 he left school?

25 A. It might have been up to one semester.

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2 Q. Did Spencer ever obtain a degree?

3 A. I'm not sure.

4 Q. Now, in response to some questions that
5 Mr. Randazzo had asked, you said that you researched
6 Americor on the Internet?

7 A. Yes.

8 Q. What did you find out when you did your
9 research?

10 A. Not much. First of all, they're -- it's
11 almost impossible to find out any information about
12 them. And I usually -- I mean, I research different
13 areas on the Internet, and I've never had so much
14 difficulty finding a company. So then I started calling
15 around and finding out where Americor was.

16 Q. Where did you get their name originally, the
17 name Americor?

18 A. It was in documentation from the New York
19 State Department of Corrections from my FOIA requests.

20 Q. So when you did an Internet search for
21 Americor, you didn't find any information whatsoever?

22 A. No. But it prompted me to make some phone
23 calls.

24 Q. Who did you call?

25 A. New York State Department of Licenses to find

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2 out if there was a d/b/a with Americor, the -- I guess
3 whoever receives taxes for any businesses that do
4 business in New York, whether there was an Americor
5 listed. I called Maryland because their letterhead said
6 Maryland. And I called the State of Maryland to find
7 out if there were any companies named Americor doing
8 business in Maryland. I called the Better Business
9 Bureau of Maryland. And I just went down the list of
10 the kinds of places you would call to find out anything
11 about the company that I could possibly find out.

12 Q. Did you keep records of those telephone calls
13 and the information you found out about Americor?

14 A. Not the phone calls. Some of the information,
15 yes.

16 Q. Do you have a file at home that you keep that
17 information in?

18 A. Yes, I do.

19 MS. MARGOLIS: I would just call for the
20 production of any file that Mr. Sinkov has in his
21 possession with respect to either, you know, his
22 investigation with respect to Americor and/or the
23 incident arising with respect to this case.

24 MS. BERG: To the extent it hasn't
25 already been produced, just send me a letter.

1 DONNY A. SINKOV

2 MS. MARGOLIS: Sure. I just know I
3 haven't received separate documentation about what he
4 has just testified to. I'll send a letter, though.
5 That's fine.

6 (ANY FILE MR. SINKOV HAS IN HIS
7 POSSESSION REGARDING ANY INFORMATION
8 ABOUT AMERICOR REQUESTED BY COUNSEL.)

9 BY MS. MARGOLIS:

10 Q. Prior to Spencer's death, had you ever spoken
11 to anybody who was employed by Americor?

12 A. No, I have not.

13 Q. Subsequent to Spencer's death, have you spoken
14 to anybody from Americor?

15 A. No, I have not.

16 Q. Do you know who Kevin Duffy is?

17 A. I have seen his name on some documents on
18 Americor letterhead that identified him as either the
19 CEO or president or in some position regarding Americor
20 and in a response from Mr. Duffy in the Rivera case to
21 allegations that Americor was providing medical care in
22 New York State without a medical license.

23 Q. Have you ever had any discussions prior to
24 Spencer's death with a person named Peter Clark?

25 A. No, I have not.

1 DONNY A. SINKOV

2 Q. Have you ever had any discussions or
3 communications with Peter Clark after Spencer's death?

4 A. No, I have not.

5 Q. Same question for Susan Waters.

6 A. I have not.

7 Q. How about Richard DeMattio?

8 A. No, I have not.

9 Q. With respect to the CDs that you had testified
10 to earlier that were filed with the copyright
11 department, do you have copies of those CDs in your
12 possession today?

13 A. Today, no, I do not.

14 Q. Do you know who may have copies of those CDs?

15 A. I do.

16 Q. That's what I just asked.

17 A. You asked me if I had it in my possession.
18 You mean here today with me?

19 Q. At home?

20 A. I have it at home.

21 MS. MARGOLIS: Okay. I'm going to call
22 for production of the CDs.

23 MS. BERG: It's one CD?

24 THE WITNESS: Right.

25 MS. MARGOLIS: I thought there was one CD

1 DONNY A. SINKOV

2 for each song.

3 THE WITNESS: Actually, they allowed me
4 to put all three on one.

5 (COPYRIGHTED BAND CD REQUESTED BY
6 COUNSEL.)

7 BY MS. MARGOLIS:

8 Q. With respect to Spencer's band, had you ever
9 gone to any of the practices?

10 A. No, I had not.

11 Q. Had you ever heard him play prior to his death
12 in his band?

13 A. I never heard the band play except on CD.

14 Q. Those were the CDs that you filed with the
15 copyright office, or was that a different CD?

16 A. The same CD.

17 Q. Did Spencer have a bank account?

18 A. He might have.

19 Q. You don't know?

20 A. I'm not sure if he did.

21 Q. So as you sit here today, you're unaware as to
22 whether or not Spencer had any kind of savings account,
23 checking account, investment account, and the like?

24 A. I don't think he did.

25 Q. You haven't received any correspondence from

1 DONNY A. SINKOV

2 any banks or credit card holders?

3 A. No, I have not.

4 MS. MARGOLIS: That's all I have.

5 MS. BERG: I just have a couple of
6 questions.

7 EXAMINATION BY MS. BERG:

8 Q. When you visited with Spencer on May 20, 2006,
9 did he indicate at any time that he was placed on
10 supervision or 15-minute supervisory checks?

11 A. No, he did not.

12 Q. Did he indicate that he had been asked
13 questions when he was received into the facility?

14 A. No.

15 Q. Did he indicate anything about whether he was
16 given any kind of a score with respect to a suicide
17 intake that was performed?

18 A. No, he did not.

19 Q. Did Spencer ever indicate to you whether or
20 not he wanted to pursue a degree beyond Westchester
21 Community College?

22 A. Yes.

23 Q. What did he indicate?

24 A. He said that he wanted to go to SUNY Purchase
25 and that he was preparing an audition tape to try to get

1 DONNY A. SINKOV

2 into their performing arts program.

3 Q. Did Spencer ever indicate to you what he would
4 like to do in terms of work once he graduated college?

5 A. Yes. He said he wanted to become a teacher of
6 either music or history and to play in a band on
7 weekends and, you know, pursue music while he was
8 working as a teacher.

9 MS. BERG: I don't have anything else.

10 EXAMINATION BY MR. RANDAZZO:

11 Q. Did he ever actually apply to SUNY Purchase?

12 A. I don't know.

13 MR. RANDAZZO: I have nothing else.

14 (At 1:28 p.m., the examination of this
15 witness was concluded.)

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1 DONNY A. SINKOV

2 J U R A T

3

4 STATE OF }

5 COUNTY OF }

6 I, _____, have read the
7 foregoing record of my testimony taken at the time and
8 place noted in the heading hereof and do hereby
9 acknowledge: (Check one)

10

11 () That it is a true and correct
12 transcript of same

13

14 () With the exceptions noted in the
15 attached errata sheet, it is a true and
16 correct transcript of same

17

18 _____
Donny A. Sinkov

19

20 Subscribed and sworn to before me
21 this _____ day of _____, 200__.

22 _____

23 Notary Public

24 My commission expires: _____.

25

1 DONNY A. SINKOV

2 E R R A T A S H E E T

3 Please note any errors or corrections on this sheet.

4 Indicate a reason for any change or correction.

5 PAGE \ LINE \ CHANGE \ REASON

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C E R T I F I C A T E

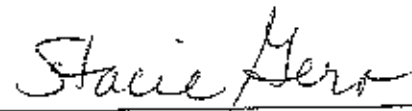
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I, STACIE GERO, a shorthand reporter and
Notary Public within and for the State of New York, do
hereby certify:

That the witness whose deposition is
hereinbefore set forth was duly sworn by me and that the
within transcript is a true and accurate record to the
best of my knowledge and ability.

I further certify that I am not related to any
of the parties to this action by blood or marriage and
that I am in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto set my
hand.

A handwritten signature in cursive script that reads "Stacie Gero". The signature is written in dark ink and is positioned above a horizontal line.

Stacie Gero, CSR

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